WILKINSON ) BARKER ) KNAUER ) LLP

# ENFORCEMENT UPDATE

This update includes notable FCC enforcement actions during the second quarter of 2024 that may be of interest to telecom, media, and tech companies.

Questions or comments may be addressed to Suzanne Tetreault at 202-383-3375 or STetreault@wbklaw.com, Jeffrey Gee at 202-383-3409 or JGee@wbklaw.com, or Jennifer Tatel at 202-383-3344 or JTatel@wbklaw.com.

FCC MATTERS



## FCC MATTERS

### GENERAL UPDATES

Following the FCC's April reclassification of broadband as a Title II service, the FCC and FTC signed a Memorandum of Understanding to coordinate their consumer protection efforts, signaling a commitment to vigorously enforce the reinstated open internet rules. The Open Internet Order, however, has been stayed by the Sixth Circuit while the Order is on appeal.

### PRIVACY AND DATA SECURITY

At the end of April, the FCC issued forfeiture orders on a 3-2 party line vote against the largest U.S. wireless carriers imposing fines, totaling nearly $200 million after finding that the carriers improperly shared user location data with third parties. The forfeiture orders affirmed the findings in the notices of apparent liability ("NALs") (released over four years prior) that the customer location data at issue was properly considered to be customer proprietary network information ("CPNI") subject to section 222 of the Communications Act and that each carrier had adequate notice of that interpretation such that they could be subject to enforcement action for failing to provide adequate protection for the data. Commissioner Carr dissented on the grounds that the location data was not CPNI and therefore the forfeitures were beyond the FCC's authority. Commissioner Simington also dissented, disagreeing with the forfeiture calculation. All of the carriers have challenged the forfeitures, in the Second, Fifth, and DC Circuits. Each of the companies, in responding to the NALs, challenged the FCC's ability to impose civil penalties without a jury trial, and are expected to continue to press that issue on appeal following the recent Supreme Court decision in SEC v. Jarkesy.

In June, the FCC entered a $100,000 consent decree to settle the FCC's investigation into Liberty Latin America's ("LLA") failure to comply with the FCC's data breach reporting requirements. In addition to being subject to the FCC's rules, LLA was subject to a Letter of Agreement ("LOA") with DOJ and DOD requiring it to notify DOJ of any suspected breach of customer information.

## NATIONAL SECURITY

Reflecting its 2024 focus on national security, in May, the FCC resolved two investigations involving unauthorized undersea cable connections to the América Móvil Submarine Cable System. Connecting and operating new international undersea cables requires review by the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector ("Team Telecom") and FCC approval. The investigation targets - Puerto Rico Telephone Company and LATAM Telecommunications - evaded Team Telecom's review by initiating construction of cable landing stations in Colombia and Costa Rica. The FCC entered consent decrees with both parties, each of which was subject to a forfeiture of $1 million - significantly larger than prior enforcement actions for undersea cable rule violations, a possible signal that the FCC is stepping up its national security enforcement.

## EQUIPMENT AUTHORIZATION

In mid-June, the FCC proposed the statutory maximum equipment marketing forfeiture ($367,436) against ASUSTeK Computer Inc. for apparently knowingly marketing Wi-Fi routers that had been modified to operate beyond their authorized power limits. The FCC previously entered a consent decree with ASUSTeK in 2014 to resolve a substantially similar violation. In the NAL, the FCC indicated that, going forward, it may adjust its "per model" forfeiture methodology for equipment marketing cases to capture the harms caused by a large volume of units sold. Pursuing a different approach - particularly one that imposes penalties on a "per unit sold" basis - could lead to far greater forfeitures in similar cases.

## ROBOCALLS/SPOOFING

Through April and May, as a part of its "Spring Cleaning" series of robocall enforcement actions, the FCC issued cease-and-desist letters to multiple companies for allegedly originating robocalls or serving as a gateway provider for an apparently illegal overseas robocall campaign. In each instance, the Enforcement Bureau also issued a "K4 Order" - a Public Notice under 47 C.F.R. § 64.1200(k)(4) notifying all U.S.-based voice service providers that they may be permitted to cease accepting traffic from the target companies.

In May, the FCC issued its first-ever "Consumer Communications Information Services Threat" ("C-CIST") classification against a group of individuals and entities the FCC identified as "Royal Tiger" for facilitating robocall campaigns aimed at defrauding and harming consumers. The C-CIST classification is designed to allow state, federal, and international regulatory counterparts and law enforcement entities to quickly detect and pursue appropriate action against threat actors in the communications space whose misconduct - in either nature or scope - poses a significant threat to consumer communication information services and who may be undeterred by past enforcement action against their operations.

In late May, the FCC issued a $6 million NAL against  the originator of AI-generated robocalls cloning President Biden's voice to spread misinformation to voters prior to New Hampshire's primary election, and a $2 million NAL against the telecom provider that allegedly enabled those calls by labeling them with the highest level of call attestation without making any effort to verify the accuracy of the calls.  These actions followed a February cease-and-desist letter against the provider. The Enforcement Bureau acted in coordination with the New Hampshire State Attorney General's office.

## NETWORK OUTAGES

At the end of June, the FCC settled an investigation regarding a December 2022 911 outage that impacted Verizon's network in six states for just under two hours. As described in the consent decree, the outage resulted from the reapplication of a known flawed security policy update file. The consent decree required payment of just over $1 million and required Verizon to implement a specific and detailed compliance plan to mitigate the risk of future outages, including specific processes, testing requirements, implementation of "best practices," and risk assessments.

## PIRATE RADIO

At the end of April, the FCC proposed fines totaling $850,000 against six operators of "pirate" radio stations resulting from its "sweep" of the Boston area under the requirements of the Preventing Illegal Radio Abuse Through Enforcement Act ("PIRATE Act"). Chairwoman Rosenworcel issued a statement in connection with the announcement affirming the FCC's commitment to pursuing enforcement against operators of "pirate" radio stations.

## FEDERAL FUNDS

The FCC entered a consent decree with Alaska Communications Systems ("ACS") Holdings to settle an investigation into possible violation of the FCC's Rural Health Care ("RHC") Program rules. According to the consent decree, ACS failed to set rural rates in compliance with the permissible methods, failed to develop appropriate pricing scenarios and models, and did not maintain any written policies or procedures specific to the development of rural rates. ACS also offered as a part of multiple bids in the RHC Telecom Program a dedicated internet access service that was ineligible for support. ACS agreed to a settlement valued at approximately $6.3 million. Notably, the settlement did not include the payment of a civil penalty to the U.S. Treasury. Instead, ACS agreed to repay approximately $5.3 million to the Universal Service Fund and the FCC agreed to credit ACS with $1 million upon the withdrawal of ACS's pending appeals and certain funding requests. ACS also agreed to implement a compliance plan.

The FCC continued enforcement actions to police participation in the Affordable Connectivity Program ("ACP"), although the program itself wound down at the end of May. In early May, the FCC released an NAL alleging fraud and abuse in connection with ACP funds. The FCC proposed a penalty of over $8 million dollars against ACP participant K20 Wireless (and Krandon Wenger), which allegedly violated rules governing transfers of subscriber benefits from one provider to another, submitted reimbursement requests for Tribal benefits for subscribers without confirming their eligibility (including changing subscribers' addresses to false addresses on Tribal lands), certified false reimbursement requests, violated the Federal wire fraud statute, and failed to respond to the FCC's Letter of Inquiry. In addition to proposing forfeitures, the FCC began the process of removing K20 Wireless from the ACP program. The FCC also completed the removal of Tone Communications Services LLC and City Communications, Inc. from the ACP program following the completion of enforcement actions against them in Q1 2024.

The FCC's last enforcement action of the quarter was a consent decree with PayG, LLC to resolve PayG's prior owners' failure to timely pay Universal Service Fund, Telecommunications Relay Service Fund, North American Numbering Plan, and federal regulatory fees. The FCC had previously proposed forfeitures against PayG in two separate NALs - one for $153,000 and the second for nearly $1.5 million. PayG paid the first forfeiture in October 2022 and settled the second for a reduced payment of $1 million in this consent decree.

## OTHER ACTIONS

In April, the FCC proposed a forfeiture of $8,000 against the licensee of KXOL-FM (Los Angeles) for alleged violations of the FCC's contest rules. The contest rules require that licensees fully and accurately disclose material contest terms and conduct contests substantially as announced and advertised, and the FCC found that KXOL failed to deliver prizes to contest winners within its own publicized deadline.

In April, the FCC entered a consent decree with Mobile Communications America ("MCA") based on MCA's operation of a radio license without authorization and failure to seek FCC approval prior to transferring control of business radio licenses. MCA had dissolved one of its subsidiaries in 2021, resulting in a pro forma transfer of control, and acquired six business radio licenses in an acquisition, both without notifying the FCC. MCA also continued radio operations on an expired license for several months before seeking STA and permanent authority. The consent decree included a $100,000 civil penalty and a compliance plan involving the creation of operating procedures to mitigate the likelihood of future violations.